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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,909	09/12/2003	Wolfgang Kempe	12755/3	6383
7590 Richard M. Rosati, Esq. KENYON & KENYON One Broadway New York, NY 10004				
07/17/2008				
EXAMINER				
CHEN, CATHERYNE				
ART UNIT		PAPER NUMBER		
1655				
MAIL DATE		DELIVERY MODE		
07/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/660,909

Applicant(s)

KEMPE, WOLFGANG

Examiner

CATHERYNE CHEN

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The Amendments filed on April 15, 2008 has been received and entered.

Currently, Claims 1, 3-13 are pending. Claims 1, 3-13 are examined on the merits. Claim 2 is canceled.

Election/Restrictions

Applicant's election without traverse of millet seed and wax in the reply filed on Sept. 27, 2007 is acknowledged.

Response to Arguments

Claim Rejections - 35 USC § 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-6, 8-13 are indefinite for the reasons set forth in the previous Office Action, which is set forth below. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive.

Applicant argues that the term "derivative" is definite based on the standard of a person of ordinary skill in the art.

Page 2 of applicant's specification gives an example of lecithin derivatives. Since applicant's definition of "derivative" is opened ended, what is encompassed by "derivative" cannot be definitely determined. Numerous compounds could possibly be derived from lecithin including simple elements like carbon and hydrogen because the term "derivative" is opened ended.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belzowski et al. (US 6207207 B1) and Domb (US 5188837) for the reasons set forth in the previous Office Action, which is set forth below. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive.

Applicant argues that the references do not teach the coating of a plant natural product having a spherical surface and at least one lecithin and its derivative.

Belzowski et al. teaches starch based center comprised of a kernel or grain of millet (Claim 2), coated with sugar shell coating (Claim 1). The seeds itself would intrinsically contain a spherical surface because a seed has curvatures that is spherical in shape. Other additives, such as vitamins, minerals, fats, oils, and preservatives may be included in the starch based center. The starch base center may be fruit pieces, peanuts pieces. The starch center is present in an amount of about 30-100% (Column 2, lines 48-57). However it does not teach lecithin, phosphatidyl serine, wax, thickness of coatings, and amounts of lecithin.

Domb teaches a wax (column 2, line 65) of phospholipid coating is entrapped and fixed to the particle surface, where the liposphere is used to deliver food additives (column 3, lines 1-2, 35-36). A phospholipid coating is lecithin (column 4, line 62), phosphatidyl serine (column 5, line 11). Thus, lecithin and its derivative are taught.

In response to applicant's argument that Domb reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Domb teaches a wax (column 2, line 65) of phospholipid coating is entrapped and fixed to the particle surface, where the liposphere is used to deliver food additives (column 3, lines 1-2, 35-36). Phospholipid can be used to deliver food additives such as coated millet (see discussion above). Thus, an artisan of ordinary skill would reasonably expect that phospholipid could be used as the types of food delivery system taught by the references. This reasonable expectation of success would motivate the artisan to use phospholipid coating on millet in the reference composition. Thus, using phospholipid coating on millet is considered an obvious modification of the references.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERYNE CHEN whose telephone number is (571)272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catherine Chen
Examiner Art Unit 1655

/Susan Coe Hoffman/
Primary Examiner, Art Unit 1655